

HOUSE BILL 1948

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18; Title 68 and Title 71, to enact the
"Tennessee Children's Product Safety Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Children's Product Safety Act".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Children's product" means a product, including but not limited to a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

(A) The product is designed or intended for the care of, or use by, any child under age twelve (12); and

(B) The product is designed or intended to come into contact with the child while the product is being used.

Notwithstanding any other provision of this section to the contrary, a product is not a "children's product" for purposes of this act if the product may be used by or for the care of a child under age twelve (12), but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or the care of a child; or if the product is a medication, drug, or food, or is intended to be ingested;

(2) "Commercial dealer" means any person who deals in children's products or who otherwise by one's occupation holds oneself out as having knowledge or skill

peculiar to children's products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products;

(3) "Crib" means a bed or containment designed to accommodate an infant;

(4) "Distributor" and "wholesaler" means any person, other than a manufacturer or retailer, who sells or resells or otherwise places into the stream of commerce a children's product;

(5) "End consumer" means a person who purchases a children's product for any purpose other than resale;

(6) "First seller" means any retailer selling a children's product that has not been used or has not previously been owned. A first seller does not include an entity such as a second-hand or resale store;

(7) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs;

(8) "Importer" means any person who brings into this country and places into the stream of commerce a children's product;

(9) "Infant" means any person less than thirty-five inches (35") tall and less than three (3) years of age;

(10) "Manufacturer" means any person who makes and places into the stream of commerce a children's product;

(11) "Non-full-size crib" means a non-full-size crib as defined in Section 1509.2 of Title 16 of the Code of Federal Regulations regarding the requirements for non-full-size cribs;

(12) "Person" means a natural person, firm, corporation, limited liability company, or association, or an employee or agent of a natural person or an entity included in this definition; and

(13) "Retailer" means any person other than a manufacturer, distributor, or wholesaler who sells, leases, or sublets children's products;

SECTION 3.

(a) No commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer shall manufacture, remanufacture, retrofit, distribute, sell at wholesale or retail, contract to sell or resell, lease, or sublet, or otherwise place in the stream of commerce, on or after July 1, 2007, a children's product that is unsafe.

(b) A children's product is deemed to be unsafe for purposes of this act only if it meets any of the following criteria:

(1) The product does not conform to all federal laws and regulations setting forth standards for the children's product;

(2) The product has been recalled for any reason or in cooperation with an agency of the federal government or the product's manufacturer, wholesaler, distributor, or importer and the recall has not been rescinded; or

(3) An agency of the federal government or the product's manufacturer, wholesaler, distributor, or importer has issued a warning that a specific product's intended use constitutes a safety hazard and the warning has not been rescinded.

(c) The department of health shall:

(1) Maintain and update a comprehensive list of children's products that have been identified as meeting any of the criteria set forth in subdivisions (b)(1) through (b)(3);

(2) Update the comprehensive list within twenty-four (24) hours after a children's product has been identified as meeting any of the criteria set forth in subsection (b);

(3) Make the comprehensive list available to the public at no cost and post it on the Internet. The Internet posting shall provide a link to www.recalls.gov or its successor and shall otherwise make available a link to the specific recall notice or warning concerning the children's product that has been recalled or for which a warning has been issued. The department shall review and update these links on a regular basis; and

(4) Include information regarding the comprehensive list of unsafe children's products maintained under this section in regular publications or mailings such as those sent to persons including, but not limited to: pediatricians; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) clinics; and local health departments.

(d) A crib is presumed to be unsafe for purposes of this act if it does not conform to the standards endorsed or established by the Consumer Product Safety Commission, including but not limited to Title 16 of the Code of Federal Regulations and the standards endorsed or established by ASTM International, as follows:

(1) Part 1508 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement the regulations;

(2) Part 1509 of Title 16 of the Code of Federal Regulations and any regulations and any regulations adopted to amend or supplement the regulations;

(3) Part 1303 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement the regulations; and

(4) The following standards and specifications of ASTM International for corner posts of baby cribs and structural integrity of baby cribs:

(A) ASTM F 966 (corner post standard);

(B) ASTM F 1169 (structural integrity of full-size baby cribs);

(C) ASTM F 406 (non-full-size cribs); and

(D) An unsafe children's product, as determined pursuant to subdivisions (b)(1) through (b)(3), may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or the agency responsible for approving the retrofit is different from the agency issuing the recall or warning. A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under age twelve (12). The notice shall include: (1) a description of the original problem which made the recalled product unsafe; (2) a description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child under age twelve (12); and (3) the name and address of the commercial dealer, manufacturer, importer, distributor, or wholesaler who accomplished the retrofit certifying that the work was done, along with the name and model number of the product retrofitted. The commercial dealer, manufacturer, importer, distributor, or wholesaler is responsible for ensuring that the notice is present with the retrofitted product at the time of sale. A retrofit is exempt from this act if:

(i) The retrofit is for a children's product that requires assembly by the consumer, the approved retrofit is provided with the product by the commercial dealer, manufacturer, importer,

distributor, or wholesaler, and the retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(ii) The seller of a previously unsold product accomplishes the repair or retrofit, as approved or recommended by an agency of the federal government, prior to sale.

SECTION 4.

(a) If a manufacturer, importer, wholesaler, or distributor of children's products has placed into the stream of commerce in Tennessee a children's product for which a recall or warning has subsequently been issued by one (1) of those entities or by an agency of the federal government, then the manufacturer, importer, wholesaler, or distributor shall initiate the following steps within twenty-four (24) hours after issuing or receiving the recall or warning:

(1) Contact all of its commercial customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular children's product in Tennessee. This contact shall include providing the recall notice or warning and shall be made to the person designated by the retailer for that product;

(2) If the manufacturer, importer, wholesaler, or distributor maintains a web site, the entity shall place on the home page (or the first entry point) of its web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, and instructions on how to participate in the recall or warning. The information shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The recall or

warning information shall allow persons to participate in the recall through the web site of the manufacturer, importer, wholesaler, or distributor; and

(3) If the manufacturer, importer, wholesaler, or distributor sold directly to a non-commercial consumer, and the consumer provided either a shipping address or e-mail address at the time of sale, then the manufacturer, importer, wholesaler, or distributor shall send a notice of the recall or warning to the consumer at either address provided. The notice shall include a description of the product, the reason for the recall or warning, and instructions on how to participate in the recall or warning. The notice shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies.

(b) If a retailer receives notice of a recall or warning regarding a children's product from a manufacturer, importer, wholesaler, or distributor, or, in the case of an involuntary recall, from a federal agency, and if the retailer at any time offered the product for sale in Tennessee, then the retailer shall do the following:

(1) Within three (3) business days after receiving the recall or warning from the manufacturer, importer, wholesaler, or distributor by a person designated by the retailer, the retailer shall remove the children's product from the shelves of its stores or program its registers to ensure that the product cannot be sold;

(2) If the product was sold through the retailer's web site, then within three (3) business days after receipt of the recall or warning by the person designated by the retailer, the retailer shall remove the children's product from the web site or remove the ability of a consumer to purchase the children's product through the web site;

(3) If an e-mail or shipping address was provided at the time a children's product for which a recall or warning was subsequently issued was purchased on the retailer's web site, the retailer shall attempt to contact the purchaser at either address provided with the recall or warning information. The recall or warning information shall include a description of the product, the reason for the recall or warning, and instructions on how to participate in the recall or warning. The information shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The retailer shall comply with this subdivision (3) within thirty (30) days of receiving the notice of the recall or warning from a manufacturer, importer, wholesaler, or distributor;

(4) Within five (5) business days after receipt of the recall or warning by the person designated by the retailer from a manufacturer, importer, wholesaler, distributor, or from a federal agency in the case of an involuntary recall, the retailer shall post in a prominent location in each retail store the recall or warning notice. This notice shall remain posted for one hundred twenty (120) days; and

(5) If the children's product for which a recall or warning was issued was sold on the retailer's web site, the retailer shall within five (5) business days after receipt of the recall or warning post on the home page (or the first entry point) of its web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product (if one was provided), and instructions on how to participate in the recall or warning. The information shall include only

the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies.

(c) Within five (5) business days after a recalled children's product is placed on the department of health's comprehensive list maintained under Section 3, a retailer who is not a first seller shall comply with subsection (b), except that such a retailer has five (5) business days to comply with both subdivision (b)(1) and subdivision (b)(2).

(d) A manufacturer, importer, wholesaler, or distributor who is also a retailer shall comply with both subsection (a) and subsection (b), except that a manufacturer, importer, wholesaler, or distributor who is also a retailer shall, within twenty-four (24) hours after issuing or receiving the recall or warning, post on the home page (or first entry point) of its web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question.

SECTION 5. The commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer shall not be found in violation of Section 3 if the specific recalled product sold was not included on the department of health's list on the day before the sale.

SECTION 6. Except as provided in Section 5, a commercial dealer, importer, distributor, wholesaler, or retailer who violates this act by failing to exercise reasonable care is subject to a civil penalty in an amount not to exceed five hundred dollars (\$500) for each day that the violation continues.

SECTION 7. Nothing in this act relieves a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from compliance with stricter requirements that may be imposed by an agency of the federal government.

SECTION 8.

(a) The attorney general, or a district attorney general in the county in which a violation of this act occurred, may bring an action in the name of the people of the state of Tennessee to enforce the provisions of this act.

(b) When (i) it appears to the attorney general that a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer has engaged in or is engaging in any practice declared to be in violation of this act, or (ii) the attorney general receives a written complaint from a consumer alleging the commission of a practice declared to be in violation of this act, or (iii) the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any practice declared to be in violation of this act, the attorney general shall:

(1) Require that person to file, on terms that the attorney general prescribes, a statement or report in writing under oath or otherwise, as to all information the attorney general considers necessary;

(2) Examine under oath any person in connection with the conduct of any trade or commerce;

(3) Examine any merchandise, or sample thereof, record, book, document, account, or paper the attorney general considers necessary; and

(4) Pursuant to an order of the circuit court, impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this act, and retain such evidence in the attorney general's possession until the completion of all proceedings in connection with which such evidence is produced.

(c) In the administration of this act, the attorney general may accept an assurance of voluntary compliance with respect to any practice deemed to be a violation

of this act from any commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer who has engaged in or is engaging in that practice. Evidence of the violation of an assurance of voluntary compliance shall be prima facie evidence of a violation of this act in any subsequent proceeding brought by the attorney general against the alleged violator with regard to the specific violation or violations addressed in the assurance of voluntary compliance.

(d) Whenever the attorney general or district attorney general has reason to believe that any commercial dealer, manufacturer, importer, wholesaler, or retailer has engaged in or is engaging in any practice in violation of this act and that proceedings would be in the public interest, the attorney general or district attorney general shall bring an action in the name of the people of the state of Tennessee against that commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer to restrain by preliminary or permanent injunction the use of that practice.

(e) Civil penalties paid under Section 6 shall be deposited into the "Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund". Moneys in the Fund shall be used, subject to appropriation, for the performance of any function pertaining to the exercise of the duties of the attorney general, including, but not limited to, enforcement of any law of this state and conducting public education programs; however, any moneys in the fund that are required by a court or by an agreement to be used for a particular purpose shall be used for that purpose.

SECTION 9.

(a) A child care agency shall not use or have on its premises, on or after July 1, 2007, an unsafe children's product as described in Section 3. This subsection shall not apply to an antique or collectible children's product if such product is not used by, or accessible to, any child under the care of the child care agency.

(b) The department of human services shall notify child care agencies, on an ongoing basis, including during the license application facility examination and during annual license monitoring visits, of the provisions of this section and this act and of the list of unsafe children's products provided and maintained by the department of health and available on the Internet, as determined in accordance with this act, in plain, non-technical language that will enable each child care agency to effectively inspect children's products and identify unsafe children's products. Child care agencies shall post in prominent locations regularly visited by parents written notification of the existence of the comprehensive list of unsafe children's products available on the Internet. The department of human services shall promulgate rules and regulations to carry out this section.

SECTION 10. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding Sections 1-9 inclusive of this act as a new, appropriately designated part.

SECTION 11. The commissioner of health and the commissioner of human services are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 12. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2007, the public welfare requiring it.